

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4483 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
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PATEL VITHALBHAI PREMJIBHAI

Versus

STATE OF GUJARAT

Appearance:

MR JITENDRA M PATEL for Petitioner
Mr K G Sheth, AGP for Respondent No. 1
Ms. Trusha Patel for Mr AJ PATEL for Respondent No. 2
MR RA MISHRA for Respondent No. 4

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 21/07/2000

ORAL JUDGEMENT

The petitioner has filed this petition under Article 227 of the Constitution of India read with

provisions contained in the Bombay Land Revenue Code and Rules made thereunder challenging the orders of the Revenue Authorities. Final order was passed by the Addl.Chief Secretary, Revenue Department (Appeals), Government of Gujarat, Ahmedabad on 13.3.1991 in Revision No.3/91 under which the revision of the petitioner was ordered to be dismissed and further order was passed for quashing the entry at Sr. No.1313 as well as entry No.1316. The facts of the case may be briefly stated as follows:

2. The petitioner claims that agricultural land bearing survey no. 478 admeasuring at six Acres 7 Gunthas is situated in the sim of village Borsan, Taluka Patan of Mehsana District. One Shri Venabhai Bhagabhai was shown as tenant in respect of the said land and one Kasidas Bhaichand was shown as landlord. The said Venabhai purchased the said land from Kasidas Bhaichand in a sum of Rs.1200/- There appears to be no sale deed obtained by Venabhai for the purchase of the said land. At least there is no averment in the petition and no such document has been produced on record. Thereafter, proceedings under Section 32(G) of the Bombay Tenancy and Agricultural Land Act, 1948 (hereinafter referred to as 'the Act') had been commenced and orders were passed in the said proceedings observing that the landlord and the tenant have mutually purchased and sold the said land voluntarily and, therefore, the said sale in favour of the tenant Venabhai was confirmed. A copy of the said order has been placed at Annexure 'A'. On the strength of the said sale, entry was posted at sr.no.1095. The petitioner has then contended that entry no.1313 dated 17.7.87 was posted in the revenue record under which it was clarified that by mistake the land was shown to be new tenure land but in fact, in view of the order dated 22.1.1964, it was not a new tenure land and therefore, the entry of new tenure land was deleted from the revenue record. The said entry was also certified by the Mamlatdar. It has been placed at Annexure 'B'. The petitioner further states that the said Venabhai died on 7.3.1987 and, therefore, the petitioner made application showing that the deceased had no other legal heir except the legal representatives of the deceased sister of the deceased. Therefore, the entry has been posted at sr.no.1315 dated 17.7.1987 in the name of legal representative of the deceased sister of the deceased Jamkuben and it has been certified on 20.8.1987 by the Mamlatdar. Thereafter, the brothers and sisters of the present petitioner appear to have relinquished their shares in the said property in favour of the petitioner and, therefore, entry no.1316 has been posted on

17.7.1987 in village form 6. It has been certified on 20.8.1987. Copy of the said entry has been placed at Annexure 'D' to the petition. Accordingly the entries were posted in village Form 7 and 12 at page 18. The second respondent felt aggrieved by the aforesaid entries and preferred appeal before the Assistant Collector at Patan. Memo of appeal has been placed at page 20 onwards. The contention of the second respondent before the Asstt.Collector was that in fact Venabhai had no issue and he had also no sister. That the persons names in the entry at sr.no.1315 are not really sons or daughters of the deceased Jamkuben and they are not legal heirs and/or representatives of deceased Venabhai. That really speaking, the deceased had no sister and, therefore, those persons shown in the said entry were not heirs and legal representatives of deceased Venabhai. Therefore, their name could not have been entered in the revenue record of right. The second respondent also contended that he was the nearest relative of deceased Venabhai and, therefore, he had acquired title of the said property by succession and therefore, his name should be entered in the revenue record of right in respect of the aforesaid property.

3. The matter was heard by the learned Assistant Collector and he has passed orders in respect of the challenge to the aforesaid entries on 25.10.1989 under which he cancelled the entry no.1313. However, entries at sr. nos. 1315 and 1316 were confirmed. Feeling aggrieved by the said judgment and order of the Asstt.Collector, Patan, the second respondent preferred Revision Application being Revision Application No.63/89 before the Collector, Mehsana. Same way, the present petitioner also preferred Revision Application being Revision Application No.64/89 against the said judgment and order of the Asstt.Collector. Both the Revision Applications were heard together and they are disposed of by a common judgment by the Collector on 30.11.1990. The Collector allowed the Revision Application No.63/89 of the second respondent partly and directed that the Dy.Collector should undertake fresh enquiry in respect of the entries No.1315 and 1316 and, therefore, the matter was remanded to him. With respect to Revision Application No.64/89, the Collector passed an order dismissing the said Revision of the present petitioner. The present petitioner, felt aggrieved by the said judgment and order of the Collector and he preferred Revision being Revision Application No.3/91 before the Addl.Chief Secretary, Revenue Department (Appeals), Government of Gujarat. There the matter was heard and disposed of by judgment and order dated 13.3.1991. The

Addl. Chief Secretary dismissed the said Revision Application of the petitioner and confirmed the order of the Collector cancelling entry no.1313. The said officer also modified the order of the Collector and also cancelled entry no.1316. He further directed that the further proceedings shall be undertaken in respect of entry no.1315 in accordance with the discussion in the judgment. Feeling aggrieved by the said judgment and order of the Government, the petitioner has preferred this petition under Article 227 of the Constitution of India. It has been mainly contended here that the Revenue Authorities were not authorized to decide the disputed issues of title. That in fact the petitioner was the legal representative of the deceased Venabhai being the son of deceased Jamkuben who was sister of deceased Venabhai. That Therefore, he had obtained legal title in respect of the aforesaid property under section 8 of the Hindu Succession Act. That considering the relationship of the petitioner with the deceased and considering the relationship of the second respondent with the deceased petitioner, he is nearer relative to deceased Venabhai and, therefore, he had the right to have preference over the second respondent. That in fact the second respondent should have been directed to approach the Civil Court for final decision in the matter since the matter involved complicated issues of title. That the authorities below should not have cancelled the entries at the instance of the second respondent who was admittedly not in possession of the suit land. It has further been contended that the appeal preferred by the second respondent before the Dy.Collector was time barred since it was filed after a lapse of 11 months. That the appeal has been preferred under the provisions of Land Revenue Rules and, therefore, it was required to be preferred within 60 days from the date of the order. That since the appeal was preferred after a span of 11 months, it was clearly time barred and there was no application made by the second respondent for condonation of delay. Therefore, the delay cannot be said to have been condoned. That this point was raised before the Collector and the State Government but they have not given any finding on the aforesaid point. The petitioner has also contended that the land bearing survey no.478 is not a new tenure land looking to the order dated 12.1.1964 at Annexure 'A'. That the orders passed by the authorities below are illegal and erroneous and deserve to be set aside. The petitioner has, therefore, preferred this petition and has prayed for appropriate writ, order or direction for quashing and setting aside the order of the Asstt.Collector dated 25.10.1989 at Annexure 'G', so far as it is against the petitioner, the

order of the Collector at Annexure 'H' dated 30.11.1990 and the order of the State Government dated 13.3.1991 at Annexure 'I'. The petitioner has also claimed to confirm the entries No.1313, 1315 and 1316 certified by the Mamlatdar. After the institution of the aforesaid suits, permission was granted to include respondent no.4 as party to the petition.

4. Rule was issued and service of rule was effected on the respondents. Mr A J Patel appeared for the second respondent whereas learned AGP Mr K G Sheth appeared for respondents No. 1 and 3. None appeared on behalf of respondent No.4. No affidavit or document has been filed on behalf of respondent No.4.

5. I have heard Mr J M Patel, learned Advocate for the petitioner, Ms. Trusha Patel appearing for Mr A J Patel on behalf of respondent No.2. I have also heard Mr K G Sheth, learned AGP appearing for respondents No.1 & 3. As stated above, none appeared for respondent No.4. During the course of the argument, it has come out that the facts are not very much in dispute. It is an admitted position that the land bearing survey no.478 situated in village Borsan in Patan Taluka of Mehsana District belonged to one Kasidas Bhaichand and deceased Venabhai was tenant in respect of the said land. It is also an admitted fact that the deceased Venabhai had purchased the said land from the said landlord without executing any sale deed in a sum of Rs.1200/-. Even otherwise he was a tenant and there was no serious dispute about the same between the parties in this petition. Therefore, the entry was posted in the name of deceased Venabhai and it was subsequently amended . The first entry showed that it was new tenure land but in view of the order dated 12.1.1964, it was noticed that the land was old tenure land and therefore, correction was made and entry was posed on 17.7.1987 at entry no.1313 which is placed at page 14 at Annexure 'B' to the petition. These facts are undisputed and even the petitioner as well as the second respondent have not challenged this position and documents. The main dispute between the parties is that by entry dated 17.7.1987 at no.1315 which is placed at Annexure 'C' at page 16, the entry has been posted in respect of the aforesaid survey no.478 to the effect that the deceased Venabhai had died on 7.3.1987 and therefore, names of the sons and daughters of the deceased sister of deceased Venabhai be entered in the revenue records. The entry was posted accordingly in those names at entry no.1315. The entry was certified on 20.8.1987. Then on the very day, a second entry was posted at sr.no.1316. It appears that

brothers and sisters of the petitioner relinquished their rights in respect of the said land in favour of the petitioner and, therefore, entry was posted accordingly on 17.7.1987 at entry no. 1316 and it was certified on 20.8.1987. Therefore, under these entries, the petitioner was shown to be the sole owner and occupant of the disputed land. Thereafter the second respondent preferred appeals in order to show that deceased Venabhai did not have any sister named Jamkuben and therefore, the petitioner is not the legal representative and heir of the deceased Venabhai and really speaking the second respondent was the nearest relative of deceased Venabhai and therefore, he was entitled to receive the said property in legacy after the death of deceased Venabhai. So on the one hand, the petitioner claims to be the legal heir and legal representative of deceased Venabhai and on the other hand, the second respondent claims to be the legal representative/heir of deceased Venabhai. Therefore, there is a crucial question of title between the two. If Venabhai had a sister named Jamkuben and if the petitioner is the son of deceased Jamkuben then he can be treated to be nearest relative of deceased Venabhai. If on the other hand, the aforesaid fact is not found to be true and correct, then the second respondent will be the nearest relative of deceased Venabhai and consequently he may be treated to be the legal heir and representative of deceased Venabhai and consequently he may be treated to be the legal heir and representative of deceased Venabhai. The matter went to the Assistant Collector challenging the aforesaid entries. There it was prayed that the appeal be allowed and it may be held that the persons named in entry nos. 1315 and 1316 were not really the legal heirs and representatives of deceased Venabhai. Therefore, their entry may be cancelled. That was the prayer of the second respondent. The Assistant Collector heard the parties and cancelled entry no.1313. However, the appeal with respect to entries no.1315 and 1316 were dismissed. The matter went to the Collector. The Collector directed cancellation of entries no.1315 and 1316 and directed the Asstt.Collector to decide the matter afresh. Therefore, entries no.1315 and 1316 have been cancelled under the orders of the Collector. These orders have been upheld by the Government in Revision Application.

6. This shows that as per the orders on record, the entries have been cancelled and direction has been given for deciding the issue afresh. Here the question arises as to whether the disputed question of facts and title can be gone into by the revenue authorities. On this aspect of the case my attention has been drawn to a

decision of the Supreme Court in the case of State of Gujarat v. Patel Raghav Natha & Ors., reported in 1969 GLR 992. There the Supreme Court has observed that when the title of the occupant is disputed by any party before the Collector or the Commissioner and the dispute is serious, appropriate course for the Collector or the Commissioner would be to refer the parties to a competent Court and not to decide the question of title himself against the occupant. This would clearly mean that the disputed question of title cannot be gone into by the revenue authorities and it should be left to be decided by the Court. So far as the last order is concerned, another authority cited before this Court is 1991 (1) GLH 155. There it has been observed that while the Revenue Secretary acting under the Land Ceiling Act, it was not permissible for him to do so. That the authority while exercising his powers under particular enactment cannot decide a question under another enactment, though it may happen that the same authority holds capacity to act under both the enactment. Any way the argument was that the matter was being dealt with under the provisions of Bombay Land Revenue Code. The provisions made under the Hindu Law and provisions made under the said Act cannot be amalgamated and all of them cannot be decided in one matter. It is not much in dispute that there is serious dispute about the title in respect of the property in question which has been referred to hereinabove. It is very clear that when the question of title has arisen and when there is serious dispute about the title in respect of the property in question, the revenue authorities cannot enquire into the dispute and cannot decide the same. The revenue authorities have found that fresh enquiry should be made and decision should be taken. However, considering the nature of the dispute between the petitioner as well as the second respondent, it is not open to the revenue authorities to decide as to who is the real heir of deceased Venabhai. For this purpose the decision has to be based on appreciation of evidence on the point as to whether the deceased Venabhai had any sister named Jamkuben and the next question will be as to whether the petitioner was really son of deceased Jamkuben. On the other hand, it would be open to the second respondent to prove that Jamkuben was not the sister of the petitioner and the petitioner and others are not sons and daughters of Jamkuben. Consequently, the decision would be required to be taken as to whether or not the petitioner or the second respondent is the legal representative of deceased Venabhai. This issue cannot be gone into by the revenue authorities. Therefore, to that extent the orders passed by the Collector on 30.11.1990 requires interference by this

Court. There the Collector has directed that the Dy.Collector should make fresh enquiries in respect of entries no.1315 and 1316. As said above, there are complicated issues of facts with regard to title of the property and therefore, the Dy.Collector or Asstt.Collector will not be in a position to decide the said issue. Therefore, the orders of the Collector directing the Assistant Collector to enter into the said question and decide the same requires to be quashed and set aside. The Government has also committed error by confirming the said order of the Collector. This means that the Government has confirmed the order of the Collector and the Collector has ordered the Asstt.Collector to make enquiry into the questions which have arisen in the matter. In view of the above matter, orders of the Government as well as of the Collector are both illegal since they do not have authority or jurisdiction to enter into the question of title between the parties. The correct position would be that when the first entry was entered and dispute was raised by the second respondent about the title of the petitioner, then at that very stage, the revenue authorities should have directed the parties to approach the Civil Court and obtain appropriate orders from the Civil Court with respect to the title to the suit property. In other words, the orders of the Government as well as of the Collector directing the Asstt.Collector to make enquiry as to title of the property are illegal and without jurisdiction and require interference by this Court. At this stage, it may be noted that learned Advocate for the second respondent has made a statement that so far as entry no.1313 is concerned, there is no dispute and even the learned Advocate for the petitioner has also requested to take note of the said statement. Learned Advocate for the second respondent has tried to support the judgment particularly the judgment of the Government but saying that the said order only contains order of remand and it does not take away right of the petitioner. However, as said above, order of remand further directs to make fresh enquiry about the disputed question of title in respect of the lands in question and, therefore it is quite clear as aforesaid that it is impermissible for them to enquire the disputed question of title. Therefore, the judgment and orders of the Government as well as of the Collector cannot be sustained.

7. Mr J M Patel, learned Advocate for the petitioner has also submitted that the appeal preferred by the second respondent before the Asstt.Collector was time barred. However, there is no mention about the said dispute in the judgment of the Asstt.Collector. At the

same time, it is a fact that when the first entry was posted, there was no notice to the second respondent and therefore, even the Asstt. Collector was required to consider as to the date of knowledge of the respondent in respect of the entry in question. Therefore, when the said issue does not appear to have been contested before the Asstt. Collector, it would not be open now to agitate the said issue before this court. This Court is not sitting as Court of Appeal against the decision of the revenue authorities. It is more so, when this court exercises its extra ordinary jurisdiction under Article 227 of the Constitution of India. It is very clear that the judgment and order of the Government as well as of the Collector directing further enquiry into the title of the property are ex-facie illegal and without jurisdiction and therefore, they are required to be quashed and set aside. To that extent the petition is required to be allowed.

8. In the aforesaid view of the matter, this petition is partly allowed. The impugned judgment and order of the Government as well as of the Collector, Mehsana at Annexure 'H' and 'I' dated 19.11.1990 and 13.3.1991 to the extent they direct fresh enquiry about the title of the property in accordance with the discussion in the judgment and orders of the Government as well as of the Collector are ordered to be quashed and set aside. The parties are at liberty to approach the Civil Court to get the decision about the title of the property in question. The entries shall necessarily be finalized and certified on receiving the decision from the Civil Court. Rule is made absolute to the aforesaid extent. Considering the facts and circumstances of the case, no order as to costs.

21.7.2000 [D P Buch, J.]
msp.